No. 2 Orig.

Answer to Pet. to set aside Report &c

Filed Nov. 7, 1892.

Office Supreme Court U. S.
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JAMES H. MCKENNEY
Clerk

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1892.

2 Orig.

STATE OF IOWA, *Complainant,*

vs.

STATE OF ILLINOIS, *Defendant.*

ANSWER OF THE STATE OF IOWA TO THE PETITION OF THE STATE OF ILLINOIS, IN SUPPORT OF MOTION ON BEHALF OF SAID STATE OF ILLINOIS TO SET ASIDE THE REPORT OF THE COMMISSIONERS HERETOFORE MADE IN THIS CAUSE.

JOHN Y. STONE,
Attorney General, State of Iowa.

JOHN F. LACEY,
FELIX T. HUGHES,
JAMES C. DAVIS,
Of Counsel.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1893.

STATE OF IOWA, *Complainant,*

vs.

STATE OF ILLINOIS, *Defendant.*

ANSWER OF THE STATE OF IOWA TO THE PETITION OF THE STATE OF ILLINOIS, IN SUPPORT OF MOTION ON BEHALF OF SAID STATE OF ILLINOIS, TO SET ASIDE THE REPORT OF THE COMMISSIONERS HERETOFORE MADE IN THIS CAUSE.

Now comes the State of Iowa, by John Y. Stone, Attorney General, and for answer to the petition of the State of Illinois, in support of its motion, filed in this cause on the 11th day of October, 1893, in which motion said State of Illinois seeks to have the order confirming the report of the commissioners set aside, respectfully represents :

1st. Said State of Iowa denies that this Honorable Court in this proceeding has jurisdiction to grant the relief asked by the State of Illinois in its said motion, and alleges that the order and decree of this Court confirming the report of the Commissioners

heretofore filed in this cause was entered on the 10th day of April, 1893. That said order and decree of this Court so confirming the report of said Commissioners was in the nature of a final decree so far as same referred to the boundary line between the State of Iowa and the State of Illinois, at the point where the Keokuk & Hamilton Bridge crosses the Mississippi River, said decree having been entered by this Honorable Court during the continuance and existence of the October Term, 1892, of this Court. That during said October Term, 1892, of this Court, no steps were taken by the State of Illinois to have changed, vacated, altered or modified said decree so confirming said report of said Commissioners, and no petition for rehearing or other proceeding was instituted by said State of Illinois during the continuance and existence of said October Term, 1892. That no proceeding looking to a modification of or vacation of said decree was commenced on behalf of the State of Illinois until the application to file the present motion, which was presented to this Honorable Court on or about the 11th day of October, 1893, long after the October Term, 1892, of this Court had expired.

It is, therefore, contended by the State of Iowa, that this Honorable Court has no jurisdiction and no authority upon summary motion, during the October Term, 1893, to alter, vacate or modify the final decree of this Court, made and entered during the October Term, 1892, of this Court.

2d. The State of Iowa, for further answer to the petition of the State of Illinois, alleges, that prior to the 10th day of April, 1893, M. T. Maloney, Attorney General of the State of Illinois, and the officer and

counsel for the State of Illinois, who has had charge of the case herein above described on behalf of the State of Illinois, had full and complete knowledge and notice that the said Commissioners, in accordance with their appointment and with the decree of this Honorable Court, had located the boundary line between the said States of Iowa and Illinois, and that said Commissioners' report had been forwarded to Washington for further action of this Honorable Court, and the State of Iowa alleges that the said M. T. Maloney, Attorney General of the State of Illinois, on the 26th day of March, 1893, by telegram, in words and figures, following, to-wit:

Mar. 26th, 1893. SPRINGFIELD, ILL.

W. I. HAYES, Cr. J. H. Cole, Wash'n.

You are authorized to appear in Sup. Court of U. S. in case of Iowa v. Illinois, and consent to the confirmation of the report of Commission as to line at Keokuk and Hamilton Bridge.

[Signed.] M. T. MALONEY.

authorized and directed Mr. W. I. Hayes, an attorney and counselor of this court, to appear for the State of Illinois and agree that this Honorable Court might confirm the report and action of the said Commissioners in locating said line between the State of Iowa and the State of Illinois.

The said state of Iowa further alleges that said order of confirmation of the report of said Commissioners was made, not only with notice to the said State of Illinois, but the said report was acquiesced in and agreed to by the said State of Illinois, through its said Attorney General.

The State of Iowa, therefore, alleges that the State of Illinois is now barred and estopped from objecting to the said order confirming said report of the Commissioners, and said finding and report of said Commissioners, as to the parties to this controversy, has become final and conclusive.

3d. And further answering, the said State of Iowa admits that on January 3d, 1893, a decree was entered in this cause wherein it was ordered, adjudged and declared by this Honorable Court that the boundary line between the said State of Iowa and said State of Illinois, was the middle of the main navigable channel of the Mississippi River.

Admits that on the 6th day of March, 1893, at the joint request of said State of Iowa and said State of Illinois, Montgomery Meigs, John R. Carpenter and Albert Wempner, were appointed as Commissioners by this Honorable Court to ascertain and locate said boundary line.

Admits that on the 30th day of March, 1893, the report of said Commissioners, prepared in writing, was filed in this Conrt, wherein they reported that the boundary line between the said State of Iowa and the said state of Illinois on the Keokuk & Hamilton Bridge had been located at a point 1041 65-100 feet east of the center of the draw span of said bridge.

The State of Iowa alleges that said report bears date March 23d, 1893, at which time said Commissioners had plainly marked upon said bridge said dividing line.

Admits that on the 10th day of April, 1893, by decree of this Honorable Court, the report of said Commissioners was duly confirmed, but denies that said

order of confirmation was made without notice to the State of Illinois, but on the contrary, charges and alleges, that said confirmation was made, not only with notice to the said State of Illinois, but by the consent and agreement of the said State of Illinois.

The State of Iowa, for further answer, alleges that the Commissioners in ascertaining and determining the said boundary line were governed by the opinion and decree of this Court, as entered in this cause, and avers that the boundary line as located by the said Commissioners was the middle of the main navigable channel of the Mississippi River, as same is located at a point where the Keokuk & Hamilton Bridge crosses said River.

Denies that said Commissioners were in ignorance of the terms and conditions of the decree and opinion of this Honorable Court.

Denies that said Commissioners willfully disregarded the decision and decree of this Court, or that they totally misunderstood same, but alleges that the middle of the main navigable channel of the Mississippi River at the point above indicated, except where impeded or obstructed by artificial means, is as was located and reported by said Commissioners, to-wit: at a point 1041 65-100 feet east of the centre of the pivot or draw span of the Keokuk & Hamilton Bridge.

In support of the allegations of this answer, the State of Iowa respectfully refers to and submits to the Court the affidavits plats and additional report of said Commissioners herewith attached.

Wherefore, having answered thus fully, the State of Iowa prays that the motion as made by the State

of Illinois be overruled, and the petition in support of said motion be dismissed.

JOHN Y. STONE,
Attorney General, State of Iowa.

JOHN F. LACEY,
FELIX T. HUGHES,
JAMES C. DAVIS. } *Of Counsel.*

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,
vs.
THE STATE OF ILLINOIS.

State of Iowa,
County of Clinton, } ss.

Walter I. Hayes, being by me first duly sworn, deposes and says that he is an Attorney and Counselor at Law, and a member of the bar of this Court. That in March, A. D. 1893, he was employed and retained to represent the State of Iowa in the matter of the confirmation of the report of Commissioners to fix the boundary line between said States, at the Keokuk and Hamilton Bridge. That on the 26th day of March, A. D. 1893, he received a telegram from M. T. Maloney, who, as he then understood and now understands, was Attorney General of the State of Illinois, the original of which telegram is hereto attached and marked "Exhibit A." That acting under said telegram, and engagement by the State of Iowa, he appeared in this Court, made the motion for confirmation, and prepared the entry therein, and consented thereto in behalf of the State of Illinois. That in some way he conceived the idea that J. H.

Cole was an Attorney in this case, although his name does not so appear upon any of the briefs or other papers connected with this suit, and that acting upon this idea, he signed the name of said Cole as one of the attornies, and that said J. H. Cole had no knowledge thereof, and is not an attorney of any Court as he now understands.

WALTER I. HAYES.

Subscribed and sworn to before me and in my presence, by said Walter I. Hayes, this 30th day of October, 1893. Witness my hand and seal.

[SEAL] FRANK THORNBURG,
Notary Public in and for said County and State.

EXHIBIT A.

WESTERN UNION TELEGRAPH COMPANY.

* * * * * * * *

Number 47 ny. Sent by tz. Rec'd by Bn. 35 pd.

Received at Corcoran Bldg., S. E. Cor. 15th & F Sts., Washington, D. C., Mar. 26, 1893. Dated Springfield, Ill., 26:

To Walter I Hays, Cr. J. H. Cole. Washn.

You are authorized to appear in Sup. Court of U. S. in case of Iowa v. Illinois and consent to the confirmation of the report of Commissioner as to line at Keokuk and Hamilton Bridge.

M. T. MALONEY.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF IOWA, *Complainant*, *vs.* STATE OF ILLINOIS, *Defendant*. } No. 5 Original. Oct. Term, 1893.

State of Iowa, } ss.
Lee County, }

We, Montgomery Meigs and John R. Carpenter, two of the Commissioners heretofore appointed by this Honorable Court, to mark the boundary line between the State of Iowa and the State of Illinois, do, herewith, present to the Court an additional statement as to the facts connected with the report heretofore made by us, and for that purpose, upon our respective and separate oaths, do say :

I, Montgomery Meigs, state that I am a resident and citizen of the City of Keokuk, Lee County, Iowa, and have been such citizen and resident since the year 1882 ; that during such period I have been in the employ of the United States government in connection with the improvement of the Mississippi River in the vicinity of Keokuk, Iowa, and Hamilton, Illinois ; that I am at present a United States government civil engineer, being assistant in charge of improving and operating the Des Moines Rapids Canal ; that I am also assistant in charge of the construction and improvement of the Mississippi River from Keithsburg, Illinois, to Montrose Iowa, and am further assistant in charge of the improvement of said River from Keokuk, Iowa, to Quincy, Illinois.

And I, I John R. Carpenter, on my oath, do state that I am a citizen and resident of the City of Keokuk, Lee County, Iowa, and am at present in the employ of the United States government as superintendent

of the improvement on the Mississippi River ; that I have been connected with the construction and operation in the vicinity of the City of Keokuk, Iowa, of the Des Moines Rapids Canal and river improvements on the Mississippi River, since the year 1870.

We, each of us, upon our respective oaths, do say that for many years last past we have been, by reason of our respective callings, by experience, observation and actual measurements, familiar with the bed of the Mississippi River at about the point where the Keokuk and Hamilton Bridge crosses said river ; that before proceeding with our respective duties as such Commissioners we obtained all the information that was possible to obtain by observation and inquiry as to the character of the channel and its location in the Mississippi River at said point so crossed by the Keokuk and Hamilton Bridge, and in the course of our investigation we examined authenticated maps and soundings made by the engineering corps of the United States army during the last fifty years, as well as other authenticated maps and soundings from surveys of said river prior to the construction of the Keokuk and Hamilton Bridge ; that in determining the point at which the boundary line as between said State of Iowa and said State of Illinois should be located, we were controlled by the language of the opinion of the United States Supreme Court in the above entitled cause, the following paragraph being, as we understood, a summary of the opinion of the Court upon that proposition, to-wit :

" The true line in navigable rivers between the states of the Union which separate the jurisdiction of one from the other is the middle of the main channel

of the river. Thus the jurisdiction of each state extends to the thread of the stream, that is, to the mid-channel, and if there be several channels, to the middle of the principal one, or, rather to the one usually followed."

And this Court further, in providing for the form of decree to be entered, said:

"The boundary line between the State of Iowa and the State of Illinois is the middle of the main navigable channel of the Mississippi River,"

That from our examination of the bed of the Mississippi River at the point where crossed by the Keokuk and Hamilton Bridge we located the boundary line with reference to the navigability of said river and not with reference to the east and westerly bank of the said river, and we determined the true boundary line between the said two states about 1041 65-100 feet easterly of the center of the pivot pier of said bridge.

We desire to submit to the Court the following facts in connection with our report:

The Mississippi River at a point between the City of Keokuk, Iowa, and Hamilton, Illinois, is divided by an island which is separated from the Illinois shore by the Hamilton slough, forming an island known as Island No. 4. This slough at one time formed a steamboat channel, and while it is no longer used by steamboats except in high water, yet its value as a steamboat channel has been insisted upon by the residents and citizens of Hamilton, Illinois, at different times, and the government has been urged by them to restore it to its former condition of navigability. On the westerly side of said

island the main stream separates it from the Iowa shore and this main stream forms the main channel of the Mississippi River in its broad sense. Within the bed of the main stream there is an artificial channel in the narrower sense, lying along the Iowa shore which is purely artificial and was excavated in the solid rock as part of the improvement connected with the construction of the Government Canal, and was built to enable boats to surmount the so-called Des Moines Rapids, the said rapids lying northerly from said bridge, and in extreme low water or even moderately low water, said rapids are only navigable for crafts not drawing more than from twelve to twenty-four inches. This artificial channel lying next to the Iowa shore is the only channel that at present can be used at low water by steamboats in going up or down the Mississippi River, by reason of the fact that the Rapids above the bridge are unnavagable at all low stages of water. The draw of the Keokuk and Hamilton Bridge is located at this point, and said bridge being a low bridge, steamboats are obliged to pass through said draw, but your Commissioners believing that under the opinion of this Honorable Court, as rendered in the above entitled cause, they were not limited to the artificial channel which was constructed since the year 1867, but in accordance with the opinion of this Court, were to ascertain the middle of the main navigable channel of said river as same existed previous to the recent construction of the artificial channel, constructed by the government of the United States in connection with the Des Moines Rapids Canal. Your Commissioners, therefore, in locating said boundary line, after making investigations and measurements, took a point 500 feet east of the easterly Illinois abutment

of said bridge, said abutment having been constructed about 700 feet into the river west of the original shore of Island No. 4, and then measured westerly to a point about 200 feet west of the abutment of the Iowa shore said abutment being about 250 feet east of the Iowa shore. The bed of said river between said points last above designated is composed of solid rock and in an average stage of water would have a least depth of about nine feet, and in extreme low water there would be a continuous depth, were it not for the artificial obstruction, in excess of three feet. The bed of the river at that point is composed of solid rock and the force of the current coming from the Des Moines Rapids above is sufficient to keep same free and clean from accumulations of sand and deposits unless same occurs from the artificial extension of the shore line, or obstructions, such as the dsposit of rock in the said river. That from the personal knowledge of your Commissioners, as well as from their investigations, they were satisfied, and so say upon oath, that prior to the obstruction of said river by artificial means, the Misissippi River between said points was navigable for boats that ordinarily navigate the Mississippi River at this point. That for many years prior to the building of the Keokuk and Hamilton Bridge, large ferry boats navigated said river over, along and across said point, some of said ferry boats being of sufficient capacity to accommodate, at one time, forty-four loaded teams, and said river about said point was navigable from the westerly shore of Island No. 4 to the easterly Iowa shore for said large boats at all seasons and times of the year, except when navigation was prevented by reason of ice in the river. That previous to the construction of said bridge, railroads had established a

depot on the west bank of Island No. 4, about 700 feet east of where said bridge terminates, and steamboats engaged in navigating said river made regular landings, received and discharged freight at said point.

Your Commissioners state that the whole width of the main arm of the Mississippi River between the points above specified, from which we took our measurements prior to the construction of the Keokuk and Hamilton Bridge, was the channel of navigation of the said Mississippi River. The said ferry boats with their numberless trips would far outweigh all of the other traffic on the said river, and your Commissioners further found that other boats engaged in ordinary commerce on the river used said channel at different points, and landed, received and discharged freight from the Illinois shore at or about a point 700 feet east from where said Keokuk and Hamilton Bridge abutment now rests.

The attention of your Commissioners has been called to a survey of the bed of the said Mississippi River, attached as an exhibit to the affidavit of Thomas McMath used in support of the motion to set aside the finding of your Commissioners. Said soundings seem to have been taken directly beneath the said Keokuk and Hamilton Bridge, and said map and survey does not correctly show the condition of the bed of said river as same would be were it not for certain artificial changes that have been made therein. The soundings made by Engineer McMath on September 13, 1893, were taken when the river was only 4-10 of a foot above extreme low water stage. This extreme low water stage was thus attained by the river in 1864, and has been only once

repeated since that time, except during ice gorges, when the river fluctuates rapidly and irregularly, and navigation is entirely suspended. Five feet below low water of 1864, is the grade established for the permanent improvement of the rapids, by the construction of the Des Moines Rapids canal, on which work nearly $5,000,000 has been already expended by the United States government. The present aim of the government engineers on open river improvements is to obtain a minimum channel of 4½ feet at extreme low water, and while such improvements have eliminated many difficult places in the river, there are many still remaining unimproved. In 1891 the low water of 1864 was repeated for the first time since that date. In that year there were places where there was but thirty inches in the channel, and at extreme low water, bars with but three feet of water over them were of not infrequent occurrence in the the ordinary channel of the river as used by steamboats. This depth of water is too low for the larger side wheel packets, but the larger stern wheel packets can keep up navigation, and do so, on three feet of water. Raft boats in general are built to draw about thirty inches of water, and these raft boats at present do at least nine-tenths of the actual commerce carried on on the upper Mississippi above St. Louis. Mr. McMath's profile shows that the general level of the river bed along the Keokuk and Hamilton Bridge is more than three feet at extreme low water, allowing for artificial obstruction now existing under said bridge.

Referring, again to the profile as made by Engineer McMath, at station 1400 as marked upon said map there is indicated a depth of but one foot and six inches. This shallowness at this point is occa-

sioned by the soundings having been taken upon the remains of a temporary pier located in 1881 to support two wooden spans that were put in in said bridge in the place of a long iron span that was destroyed by a collision with the steamer War Eagle in that year, said temporary pier having been only partially removed. The shallow water indicated in the vicinity of station 950 on said map is by reason of soundings having been taken upon a pile of rip rap rock thrown in to strengthen a pier of the bridge that had been moved out of line by the ice. In fact the accumulation of stone by ice movements, and by the obstructions placed in the river since and during the construction of said bridge, and scattered in the vicinity by the same agency, have to some extent changed the natural bed of said river from what it was before the construction of said bridge, and have caused accumulations in connection with said masses of rock, that may cast some doubt upon the accuracy of any profile of said river bed taken at this time. For many years the material dredged annually from the United States canal has been dumped just below the bridge and close to it, and this would result in more or less filling about said bridge. The deep water shown in Engineer McMath's plat in the vicinity of station 1600, is a hole or pocket in the bed of the river, which fades away in shallows a short distance above and below said point. From the investigation we were able to make, from a careful examination of well authenticated plats and soundings made of said river bed before the construction of said bridge, from personal intercourse with men who were well acquainted with the channel of said river prior to the construction of said bridge, and from our own personal

knowledge and experience, we conclude that under the provisions of the opinion of this Court in the above entitled cause, the main channel of the Mississippi River which was navigable for steamboats that ordinarily navigate said river,—eliminating from same recent artificial obstructions—is between a point 500 feet east of the easterly end of said bridge, and 200 feet west of the westerly end of said bridge.

We further desire to say that we have absolutely no interest of a personal character whatever in this matter; that we were not approached or spoken to by any attorney, agent or officer of the Keokuk and Hamilton Bridge or of the State of Iowa prior to our appointment or subsequent thereto, except as we may have had occasion to call upon said officers for information or records in their possession. That the Superintendent of the bridge, Mr. John H. Cole, expressly stated to us that the place where the boundary line was marked by said Commissioners was a matter that was entirely immaterial to the Bridge Company; their only desire being that the same should be definitely and permanently fixed.

We further desire to state that we gave the opinion of this Honorable Court careful consideration, and our measurements and determination of the boundary line were made as we believed in exact accordance with the letter and spirit of said opinion. That in pursuance of our appointment as Commissioners in the above entitled cause, we completed our report as Commissioners on the 23d day of March, 1893, and on the 23d day of March, 1893, after properly signing and verifying same, said report was forwarded to the Clerk of this Honorable Court and

at the time of completion of said report we plainly marked upon the structure of the Keokuk and Hamilton Bridge a line which would indicate the boundary line between said State of Iowa and said State of Illlnois.

MONTGOMERY MEIGS.
JOHN R. CARPENTER.

Subscribed and sworn to before me, this 30th day of October, 1893.

[SEAL.] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF IOWA, *Complainant*,
vs.
STATE OF ILLINOIS, *Defendant*. } No. 5 Original.

State of Iowa, }
Lee County, } ss.

I, Albert Wempner, upon my oath, duly administered, do depose and say:

That I am one of the Commissioners heretofore appointed by this Honorable Court in the above entitled cause, to locate the boundary line between the State of Iowa and the State of Illinois; that I am by profession a pilot of the Mississippi River, having had since 1852 continuons experience in navigating said river at various points from St. Louis, Mo., to St. Paul, Minn.; that I am the same Albert Wempner who made an affidavit on behalf of the State of Illinois in the controversy pending in the State Court of said State, a copy of said affidavit appears in con-

nection with the motion on behalf of the State of Illinois to set aside the report of the Commissioners heretofore made. That I have not had submitted to me the original of said affidavit and as to the correctness of the copy I am unable at this time to state. I state, however, that the said affidavit said to have been made by me on or about the 25th day of April, 1891, was made, to some extent, upon a misapprehension of the facts; that while acting as pilot upon the Mississippi River, boats engaged in the carrying trade, going north of the City of Keokuk, as a matter of convenience, ordinarily selected a channel running nearer the Iowa shore than to the Illinois shore; that where my affidavit states "that said boats could not go easterly at a point in the vicinity of the Iowa shore in said channel," I was mistaken, and that portion of the affidavit was not called to my attention at the time of making same, as I have personally known for a great many years that the Mississippi River at a point between Keokuk, Iowa, and Hamilton, Illinois, at the place where the Keokuk and Hamilton Bridge is located, was prior to the location of the bridge, navigable for steamboats engaged in the commerce of said river. I had personal knowledge of the fact that large ferryboats made many trips daily between said points. I know of the location of warehouse and steamboat landing on the westerly bank of Island No. 4, some 700 feet east of the present Illinois abutment of the Keokuk and Hamilton Bridge; that boats engaged in the ordinary commerce on said river, landed at said warehouse for the purpose of discharging and receiving freight; that when appointed as a Commissioner by this Court, I made a careful examination of the bed of said river, examining plats, and surveys of the bed of same, with a view

of ascertaining the middle of the main navigable channel of the Mississippi River at the point where the Keokuk and Hamilton Bridge is located; that after making said particular examination I became satisfied that the middle of said navigable channel, eliminating artificial obstructions, was at a point midway from a point 500 feet east of the easterly or Illinois abutment of said bridge and a point 200 feet westerly from the west abutment of said bridge, and so believing, in connection with the other Commissioners appointed in said cause, we located the boundary line between the State of Iowa and said state of Illinois at such point.

I further state that I have read the additional report and statement as made by Montgomery Meigs and John R. Carpenter, bearing date October 30th, 1893, and I believe that the facts stated in said additional report and the conclusions arrived at in said report, are true and correct.

ALBERT WEMPNER.

Subscribed and sworn to before me, this 31st day of October, 1893.

[SEAL.] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF IOWA, *Complainant,*
vs.
STATE OF ILLINOIS, *Defendant.*
} No. 5 Original.

State of Iowa, }
Lee County, } ss.

I, John R. Carpenter, upon my oath, do say, that I am the John R. Carpenter who acted as one of the Commissioners in this cause; that subsequent to

the finding of the Commissioners I had a conversation with Mr. J. L. Miller, an attorney at law of Hamilton, Illinois, in relation to the location of the line by the Commissioners. Mr. Miller asked me how the Commissioners came to locate the line where they did. I said the Commissioners understood the meaning of the opinion of the Supreme Court was, that the middle of the main navigable channel of the Mississippi River was the boundary line between the State of Iowa and the State of Illinois; that we ascertained what, in our opinion, was the middle of said main navigable channel of said river, and after so ascertaining measured the line accordingly. Mr. Miller said, after my explanation, I can readily see how you arrived at your decision; that I am living at Hamilton, Illinois, and of course as a citizen of Hamilton, was a little prejudiced in favor of Hamilton. I told him the Commissioners were not in favor of either Iowa or Illinois and had no choice in the matter; that we located the line where we thought the Supreme Court intended it should go.

JOHN R. CARPENTER.

Subscribed and sworn to before me, this 30th day of October, 1893.

[LEAL] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,

vs.

THE STATE OF ILLINOIS.

State of Iowa, } ss.
Lee County. }

O. S. Willey, being by me first duly sworn, deposes and says, as follows:

I am a resident of Keokuk, Iowa, and by profession a draughtsman, in which profession I have been engaged for 40 years. For the past 20 years or more, employed by the United States. In 1869 I was engaged by the Keoknk and Hamilton Bridge Co. to prepare maps, plans, &c., for the erection of a bridge across the Mississippi River at Keokuk, Iowa, by said Company. From the original surveys and soundings of the river at that point I prepared a profile of the bed of the Mississippi River, from which, on October 20th, 1893, I made a correct and true copy, which is attached to this affidavit, and marked "Exhibit D." The same is correct in every particular as herein stated and as noted on said profile.

[SEAL] O. S. WILLEY.

Subscribed and sworn to before me, this 31st day of October, 1893.

WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF IOWA, *Complainant*,
vs.
STATE OF ILLINOIS, *Defendant*. } No. 5 Original.

State of Iowa, }
Lee County. } ss.

I, John H. Cole, being first duly sworn, do depose and say, as follows:

I am a citizen of Keokuk, Iowa, a civil engineer by profession, and for the past twelve years have been the Superintendent of the Keokuk and Hamil-

ton Bridge Company, but have no pecuniary interest in said corporation whatever. I am familiar with all the litigation between said Company and the various municipalities of Illinois over the question of taxation, in which in a number of cases, Mr. A. W. Green has appeared as counsel for the City of Hamilton and Township of Montebello, being the township in Illinois in which the City of Hamilton is located, and being the same person now appearing as counsel for Illinois in this case, all of which culminated by agreement between both parties, and at the suggestion of the attorneys of Illinois in invoking the aid of the States of Iowa and Illinois to determine the question of the boundary lines, as under the constructions of the lower Courts, both States were claiming the same property for assessment.

On the appointment of the Commissioners to fix the line, the question arose as to who should pay the expense of said Commission, and it was found that there was no fund available for that purpose in either state, nor would there be until after the meeting of their respective Legislatures. As several suits between the parties particularly interested were waiting the determination of this question, and as a new assessment was very soon to be made in Illinois, the Keokuk and Hamilton Bridge Co., through me, agreed to pay all reasonable expenses of said Commission in fixing the line of their property, and accordingly, at the proper time, I paid said Commissioners the sum of one hundred and fifty dollars, being fifty dollars each for their services, and about fifteen dollars for map making, copying, etc. In paying this sum I fully expected to ask the states interested when their legislatures met, to reimburse said Bridge Company, and only did it to further the settlement

of other suits and avoid litigation over another assessment that might be made to the wrong point. I know Mr. J. L. Miller, whose affidavit is filed with the others by the State of Illinois, and who says he is one of the attorneys employed by the municipalities of Illinois in the litigation with the Bridge Company, and see said Miller crossing the Keokuk and Hamilton Bridge very frequently, and as the Commissioners mark upon said bridge is plainly indicated by two broad bands of different colored paints, and is and was of common notoriety, know that said Miller must have had knowledge of the point at which said line was fixed at or about the time said line was fixed, to-wit: March 23d, 1893. I am also acquainted with the Mess. Glazebrook and Blackmore who signed a joint affidavit as to their connection with making the profile prepared by Mr. McMath. Mr. Glazebrook is the ex-mayor of the city of Hamilton and the supervisor for the township of Montibello in which Hamilton is located, and Mr. Blackmore is the assessor for said township. Both of these men cross the bridge very often and must have had knowledge of the marking of the line on the bridge by the Commissioners very soon after it was done, and both of them know that the measurements or soundings taken at station 1400 upon said profile were taken on top of an old wooden pier placed in the river by the Bridge Company in 1881. There can be no doubt but what they knew the sounding taken at "Commissioners Mark" on said profile did not go to the bed of the river, as the rock thrown in to protect the pier at that point could be plainly seen at the time the soundings were taken. I have read all the affidavits filed by the State of Illinois on the motion of her Attorney General to set aside the

order confirming the report of commissioners to fix the boundary line between the States of Iowa and Illinois. H. S. Brown, one of the deponents, in that motion, says;

"That the deepest water was, at that time, at a point about 250 feet from the Iowa shore line." Having been for five years the city engineer of the City of Keokuk, I have had knowledge of all the maps, etc., of said city and a careful measurement 250 feet from the shore line as plainly shown upon the original map of Keokuk, towards the river brings you to a point about 50 feet west of the west abutment of the Keokuk & Hamilton Bridge and where there is no water at the present stage, to-wit; 1.4 feet above low water mark, which is a better stage than he says was in the river at the time he made his examination which he says was "during extreme low water." From soundings I have found that even another 250 feet further into the river will not find the deepest water.

I have also read the affidavit of Thomas B. McMath, and examined the profile prepared by him of the bed of the river and from soundings taken at station 1400 on said profile I know that they were taken from the top of an old pier that I put in to carry some wooden spans in the fall of 1881, as the bed of the river is at least 5 feet below the indicated bed upon that profile. At the point marked "Commissioners mark" the soundings do not go to the bed of the river but only to the sand and debris that has accumulated around the pier near there and where great quantities of rock were thrown in by me to save the pier from being pushed out by the ice, a slight movement from this cause having taken place. The original bed of the river here is at least 2.5 feet below the point indicated upon said pro-

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file. From repeated examinations of profiles made of the bed of the river at this point by the United States Engineers, the city engineer of Keokuk in 1867, and the engineers of the Bridge Company, before locating the bridge, I believe the river bed between Keokuk, Iowa, and Hamilton, Illinois, to be practically one broad and comparatively level ledge of rock with here and there a hole or pocket worn deeper in some soft places in the rock, with no obstruction to navigation by any steamer, that is used in the commerce of said river at this point, and that the profile of said McMath does not correctly show the bed of the river in that it represents obstructions to the navigation of the river that are solely artificial, as I have found by repeated soundings reduced the low water mark of 1864. During my twelve year's experience as superintendent of this company with an office upon the west approach of the bridge, I have had opportunity to observe the course of a great many boats, as there have gone through the draw of said bridge as many as 3000 craft in one season, and I have never, even when the water was below the low water mark of 1864, which is the government base for reference, seen any kind of a craft strike or have any trouble in going over a point 400 feet east of the Iowa shore or 150 yards below said bridge.

I have seen a very great many times, steamers crossing and recrossing the river in all directions both above and below said bridge with tows of lumber, willows and the dump boats of the U. S. dredging fleet. In extreme low water it is of frequent occurrence that lumber is brought out of the Des Moines Rapids Canal and taken across the river and pushed up as far as possible under the east span of said bridge, and then for the boat to get in above the

bridge along the Illinois shore and pull the tow into the deep water from there. Such an occurrence happened on the 23d and 24th day of October, 1893, with a stage of water 1.4 feet above low water. The pivot spans of said bridge were located at their present location by order from the United States Engineering Corps in order that boats could get in and out the Des Moines Rapids Canal, which terminates about 1000 feet above the bridge. Afterwards and before the canal was opened for business a channel was blasted out of the rock from below the west opening of the pivot span to the lower lock of said canal.

J. H. COLE.

Subscribed and sworn to before me this 30th day of October, 1893.

[SEAL.] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF IOWA,
vs.
STATE OF ILLINOIS, } Original.

On motion of State of Illinois to vacate order approving report of commissioners.

State of Iilinois,
Hancock Connty. } ss.

George Edmunds, of Carthage, in said county, being duly sworn, says that he is nearly seventy-two years of age. That he has resided in Hancock and Adams counties, in Illinois over forty-eight years. That during the summer and part of the fall of 1845 he resided at Keokuk, Lee County, Iowa, and for five

years, next thereafter at Nauvoo, Hancock County, Ill. the next five years he resided at Quincy. Illinois, and since that continuously in Hancock County. That during all that time he has been engaged (among other things) in practicing law. That during the years 1846 and 1847 he, as a civil engineer, made a survey of the east side of the Mississippi River the whole length of the Des Moines Rapids of said river (said rapids extending from Nauvoo, Illinois to Hamilton, Illinois, and Keokuk, Iowa) with a view of presenting profiles to enable parties to raise money to construct a canal for hydraulic purposes, and at that time was very familliar with the depths of water on said rapids, as also between where Hamilton now is, and Keokuk, for half a mile or more below the lower chain of said rapids. That deponent believes said river, during the latter part of the summer and early fall of 1846, was as low if not lower than at any time since. That in 1845 and 1846 the original westerly SHORE of Islands Nos. 2 and 4 and of the towhead at the westerly end of Island No. 4, was substantially as indicated upon the plat attached hereto and marked "Exhibit A," where marked original shore line, and so remained until after the road, dam and dyke were built by the ferry company across Island No. 2, the slough between Islands No. 2 and 4 and the towhead and extending into the river about 300 feet: said dyke being marked on plat as dyke No. 1, and said road extending from the main shore in Illinois from what is now the west end of Main street, in Hamilton, to said dyke across said Island No. 2, dam and towhead. The west shore of said Island No. 2 being at this date substantially as it was in 1845 and 1846 above said dam. That the construction of said dam and dyke changed to a considerable extent the course

of the current in the easterly part of said river, and in the opinion of deponent caused deposits of sand below said dyke where before the bottom had been smooth rock, with occasional small depressions.

That in the opinion of deponent, before the construction of said dam and dyke any steam (or other) boat that could pass over said rapids at any stage, high, low or medium water, could as easily and safely pass over any part of said river between said Island and said Iowa shore, as it could pass over said rapids. That the distance from the lower chain of said rapids to said bridge, is about one half mile, may be something more.

That deponent was the attorney of said Ferry Company, and as such aided in securing license, charter, etc., for said company, and as engineer advised as to the locating of said road, dam and dyke, said road, dam and dyke being shown on said plat crossing said shore line. That said dyke extended northwest from the west shore of towhead at the northeast end of Island No 4, about 300 feet, and perhaps more; and its west and northwest front formed the ferry landing for a number of years, until about the time the railroad was located, when it was run from the main land to the then river, now east end of the approach of the Keokuk and Hamilton Bridge, when a road was constructed by the ferry company southwesterly along the river bank on Island No. 4, to where said plat shows a second dyke extending into the river some 700 feet from the then shore, and perhaps more; and which dyke is immediately north of said bridge approach. Said dyke was constructed by said Ferry Company. The construction of this dyke shortened the distance to ferry about one-quarter of a mile.

Deponent was one of the contractors for the delivery of stone for the basement of the State house at Springfield, and before the construction of said bridge, planned, and had constructed a track from the then Wabash depot at Hamilton, northwestward along said second dyke about half or two-thirds of its length, and there constructed derricks for the deliv- of stone from boats to cars, at which the great mass of the stone for the State house was transferred. The stone was principally brought on flat boats or barges towed by a steamboat to and from said place of unloading.

The deponent has been the attorney of the Keokuk and Hamilton Bridge Company in Illinois, ever since the construction of said bridge in 1871. That the authorities of Hamilton, Illinois, assumed, after the construction of said bridge, that the state line between Illinois and Iowa was at the east end of the draw of said bridge, 380 feet east of the west abutment of said bridge, and 580 feet east of the Iowa shore of the river, and 1812 feet west of the east abutment of said bridge, and over 2,500 feet west of the east shore of said river on said Island No. 4; and the Iowa authorities assumed the right to tax said bridge to its center, thereby making a double assessment of 716 feet of said bridge proper. Litigation was commenced in Illinois to get rid of that excess of taxation, some of which is yet pending.

Deponent on behalf of the Bridge Company applied to Attorney General Hunt to bring suit in this Court against the State of Iowa in the name of the State of Illinois. Mr. Hunt refused to bring the suit, but said if Iowa would bring the suit, he would appear and answer for Illinois. Thereupon, application was made to the Attorney General of Iowa and this

suit was brought; and in this cause Commissioners were appointed and made report as to the Keokuk and Hamilton Bridge, which was filed and motion made for confirmation by the State of Iowa, March 30, 1893. On Saturday 1st, or Monday 3d of April, 1893, deponent was at the Attorney General's office of Illinois at Springfield, and there informed either the Attorney General or his assistant that said report had been filed and motion for confirmation made, and as the time to make a new assessment was near at hand, requested that the matter be attended to at once. At that time deponent had no knowledge as to what that report contained; he only had learned the fact of filing report and motion by telegraph, without detail thereof.

Deponent further says that he did not employ James C. Davis as an attorney in this cause. That never, to deponent's knowledge, has he spoken to the said Davis on the subject of this suit until since this motion was made.

GEORGE EDMUNDS.

Subscribed and sworn to before me, October 28th, 1893. Witness my hand and official seal.

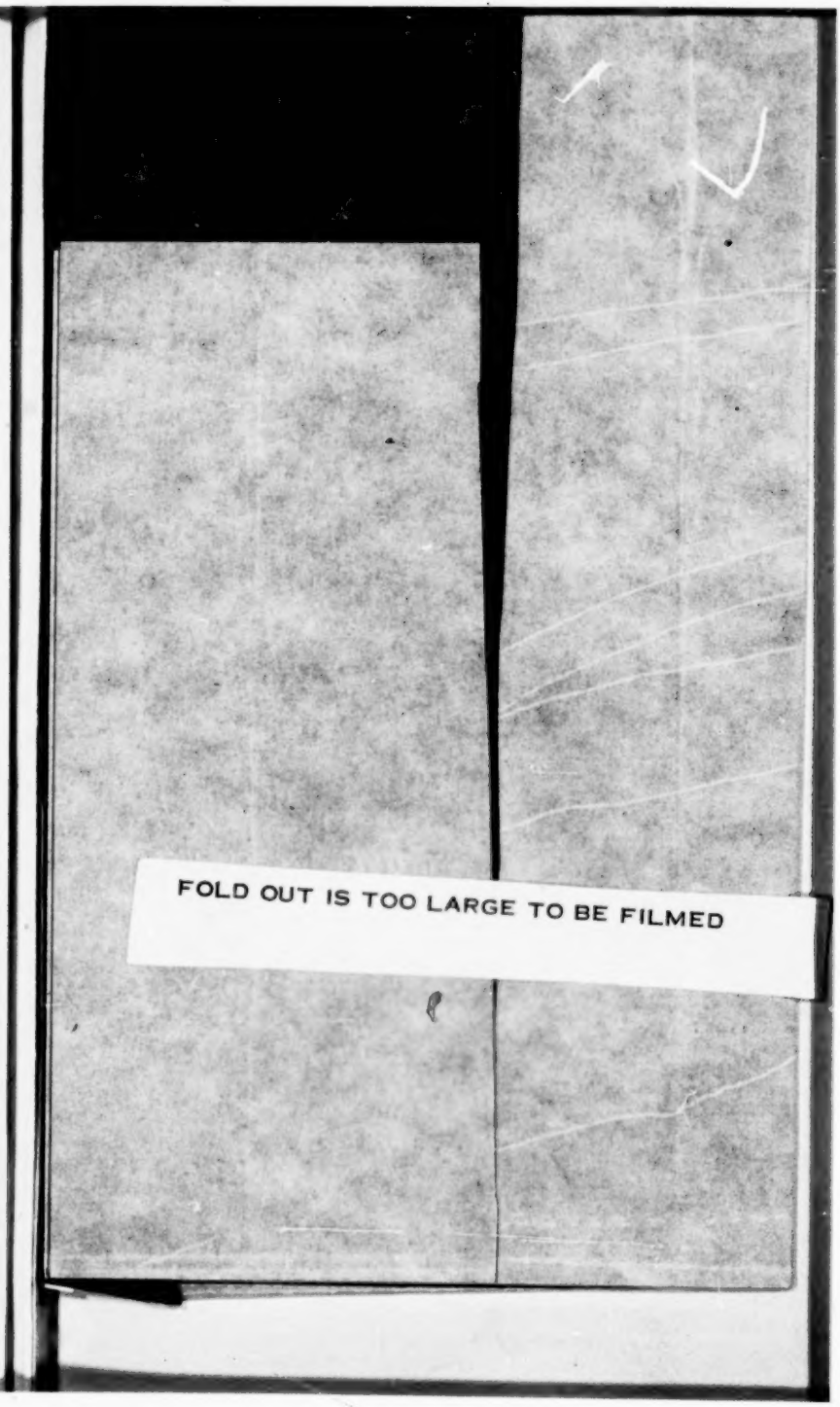
[SEAL] WILL C. NEWTON,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF IOWA, *Complainant,*
vs.
STATE OF ILLINOIS, *Defendant.* } Original.

On motion by the State of Illinois to vacate order approving report of Commissioners.

State and Southern District of Illinois ss.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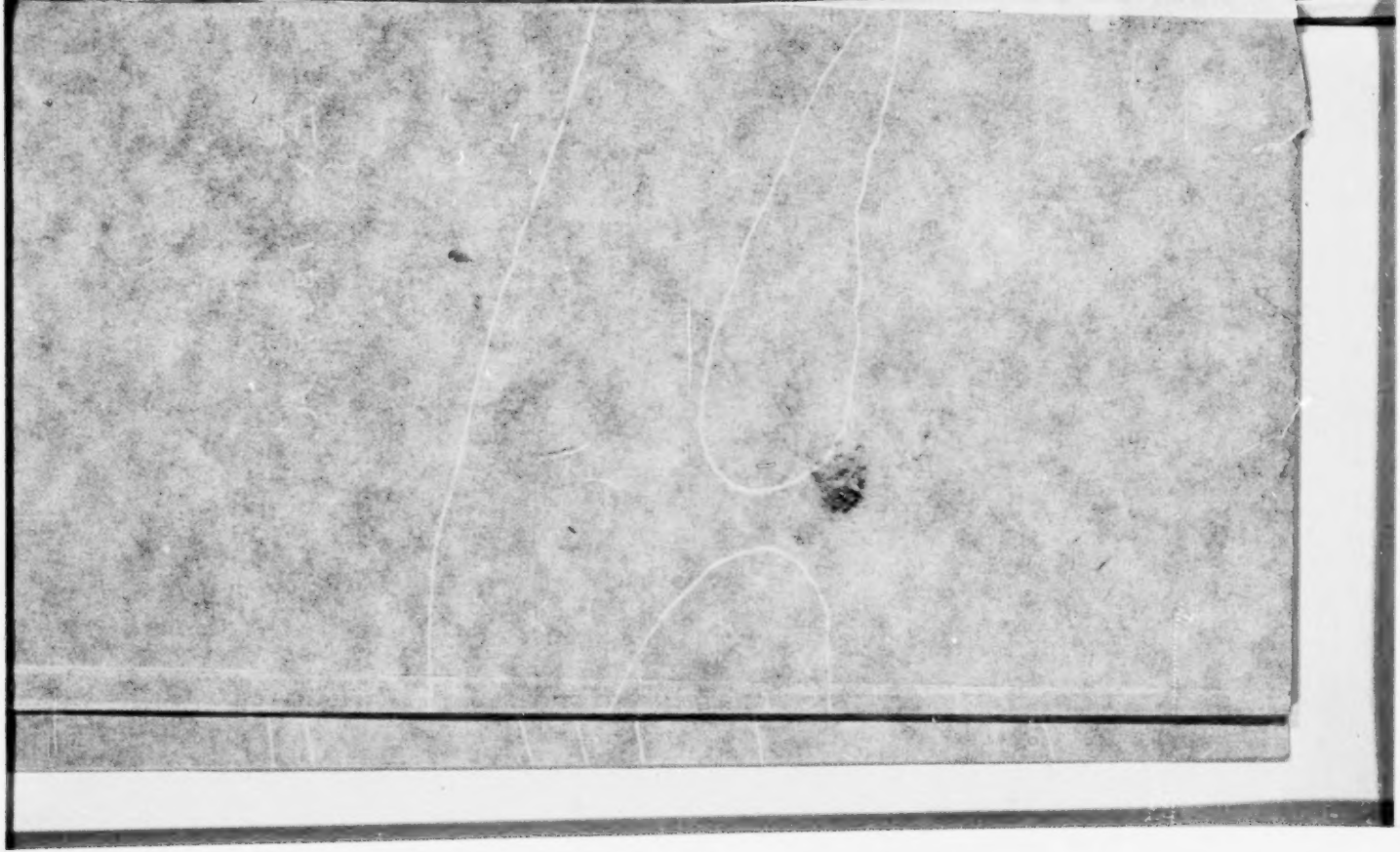

William R. Hamilton, of Carthage, Illinois, being duly sworn, says: that he has resided in Hancock County, Illinois for the last 58 years, except about one year he was in Oregon.

That from 1856 to 1858 he resided at Hamilton in said County of Hancock, and with deponent's father, Artois Hamilton and deponent's brother, John D. Hamilton, (both now deceased) he was connected with the business of warehousing, and to some extent in the lumber trade on the Mississippi River at Hamilton. That they had for considerable time, a Warehouse on the river front, just south of the dyke, at which the ferry boat landed. At which Warehouse steamboats engaged in the ordinary river traffic were in the habit of landing and receiving and delivering freights. That the said Warehouse was burned about the year 1859 or 1860.

That deponent during the time he resided at Hamilton, was often on the river between the lower chain of the Des Moines Rapids of said river and a point considerably below the location of the present Keokuk & Hamilton Bridge, and thinks he is well posted as to the depth of water, below said lower rapid (chain) for a mile or more. That in the opinion of deponent, prior to the construction, by the Ferry Co. of its road from the main shore at Hamilton across Island No. 2, the dam across the slough between Islands No. 2 and 4, and dyke extending into the river from the tow head at the upper end of Island No. 4, any steam or other boat that could pass over the said rapids, could readily pass *at any point* in said river between the west shores of Islands No. 2 and 4 and the Iowa shore.

That deponent frequently saw steamboats, of the

largest class navigating said river from St. Louis to Keokuk and to St. Paul at the Wabash depot at the west shore of Island No. 4, receiving and discharging freight. That the same class of steam boats also landed at said Warehouse herein before mentioned, to receive and land freights.

WM. R. HAMILTON.

Subscribed and sworn to before me, October 28th, 1893.

G. EDMUNDS,
Comr. Circuit Court, U. S. for S. District of Illinois.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF IOWA, *Complainant*, *vs.* STATE OF ILLINOIS, *Defendant*. } No. 5 Original. Oct. Term, 1893.

State of Iowa, } ss.
Lee County, }

I, David Steeley, upon my oath, do state, that I am by profession a pilot of the Mississippi River, and have been for 29 years last past; that at present I am in the employ of the United States government as pilot on a government steamer engaged in river improvement between Keokuk, Iowa, and Ft. Madison, Iowa; that I have had many years experience in navigating the Mississippi River in the vicinity of Keokuk, Iowa, and Hamilton, Illinois, and am familiar with the location of the navigable channel of said river and the depth of water flowing in same; that prior to the construction of the Keokuk and Hamilton Bridge I was employed for seven years on the ferry line between Keokuk, Iowa, and Hamilton,

Illinois; I was pilot on three diffenrt boats with that line, the Gate City, Toledo and Keokuk, the last named was a boat 140 feet long and 40 feet beam with two boilers and a pair of large engines; she would carry forty-four loaded teams, besides passengers; we ran this boat at all stages of water until driven into winter quarters by ice; the ferry landing on the Illinois side at Island No. 4 was on the shore of Island No. 4 about 100 yards northerly from the east abutment of the Keokuk and Hamilton Bridge and about 700 feet east of the present location of that abutment. There was also a steamboat landing for the use of warehouses above the ferry landing about from 100 to 200 yards and loaded steamboats engaged in navigating the Mississippi River could land and did land at said depots for the purpose of receiving and discharging freight at all stages of water. The only obstruction to navigation between Keokuk, Iowa, and Hamilton, Illinois, were some iron chimneys of the steamer Louisiana, out from the Hamilton landing, that had been blown off the boat in a storm. These filled with sand and gravel and we used to avoid this obstruction, but otherwise the boats used to slant across from the Keokuk landing anywhere and landed on Island No. 4. At extreme low water no boats could load to more than a depth of 3½ feet and go up and down the river. In the extreme low water of 1864 very few boats ran at all; to my recollection no packets came into Keokuk at all during the lowest water of that year either from above or below. In 1891, during the low water, I was employed on a steamer owned in Keokuk, which was used to tow rafted lumber from Keokuk across to the Illinois shore at a point opposite the old ferry landing; there

was no difficulty in towing said lumber with said boat across to said point and I found five feet of water and more, all the way. The Keokuk landing was always shoal at low water; in 1891 boats hit the bed of the river at quite a distance from the shore.

D. C. STEELEY.

Subscribed and sworn to before me, by D. C. Steeley, this 28th day of October, A. D. 1893.

[SEAL] A. HOLLINGSWORTH,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF IOWA, *Complainant*, *vs.* STATE OF ILLINOIS, *Defendant*. } No. 5 Original. Oct. Term, 1893.

State of Iowa, } ss.
Lee County, }

I, David Tipton, upon my oath do say, that I am a citizen of Rock Island, Illinois; that since 1854 I have been a pilot on the Mississippi River, running between St. Louis, Mo., and St. Paul, Minn., and have been engaged in the business of piloting every season since that date; that I am now in the employ of the United States government, being pilot of the United States steamboat "General Barnard," now engaged as a snag boat in the improvement of the Mississippi River between the mouth of the Missouri River and City of St. Paul, Minnesota. I am familiar with the bed and channel of the Mississippi River at the point where same is crossed by the Keokuk and Hamilton Bridge, and have been familiar with the bed of said river and

channel since 1854. That the City of Keokuk is at what is known as the head of navigation in extreme low water; before the construction of the bridge in extreme low water ; and before the construction of the Des Moines Rapids canal in extreme low water boats were unable to navigate the Mississippi River above the City of Keokuk; that prior to the location and construction of the Keokuk and Hamilton Bridge, about 1867, westerly the shore line of Island No. 4 was about 700 feet east of the easterly abutment of said bridge; that there was located upon said westerly shore of Island No. 4 a ferry wharf and landing and a steamboat warehouse and landing ; the ferry landing was used by large ferry boats which made daily trips from Keokuk, Iowa, to Hamilton, Illinois, such ferry boats running during all times of the navigable seasons; that the other steamboat landing and warehouse was used for the purpose of steamboats engaged in the ordinary navigation of the Mississippi River landing for the purpose of receiving and discharging freight; that during all times during navigable seasons of the Mississippi River, and except when navigation was prevented by reason of ice, all boats that could land at the City of Keokuk were able to cross the river and make the landing at Hamilton, Illinois, at the said warehouse and landing as then described on west bank of Island No. 4 ; that in my judgment there was a little more water and a better landing for steamboats on the Illinois shore at the point where the said wharf and warehouse is located, than there was on the Iowa shore; that the main channel of the Mississippi River before the construction of the Keokuk and Hamilton Bridge and before said channel was obstructed by artificlal means, was nav-

igable from the landing at Keokuk, Iowa, across to the landing on the west bank of Island No. 4 at Hamilton, Illinois. The bed of said channel is composed of solid rock, and a swift flowing current from the Rapids keeps same free from sand and other obstructions. That prior to the construction of the Keokuk and Hamilton Bridge the main channel of the Mississippi River from the west shore of Island No. 4 to the Iowa shore was navigable for boats engaged in commerce upon said river. That the ordinary boats engaged in navigating the Mississippi River can float in thirty inches of water and ordinary boats so used in navigation can pass over places in said river that have but thirty inches of water.

D. TIPTON.

Subscribed and sworn to before me, this 31st day of October, 1893.

[SEAL.] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,
vs.
THE STATE OF ILLINOIS.

State of Missouri, } ss.
St. Louis County. }

S. M. Ball, being by me first duly sworn, deposes and says, as follows:

I am a resident of the City of St. Louis, Missouri. Twenty four years of my life I followed the business of steamboat.nan, being in that time part owner of a

steamboat, and for a part of said time a licensed master and pilot on the Mississippi River. I am quite familiar with the Mississippi River between the the City of Keokuk, Iowa, and Hamilton, Illinois. As a pilot I took the steamer Enterprise into Hamilton Slough and know that before said slough was filled up on account of the building a railroad bridge across the same that both changed its course and narrowed it up, that the same was navigable at a fair stage of water. In November and December, A. D. 1881, during a time when the Keokuk and Hamilton Bridge was disabled, by reason of a collision with with the steamer War Eagle, I acted as master and pilot of on a very large and heavy ferry boat owned in St. Louis, and built for use there by the Wiggins Ferry Co., in transferring freight, teams, etc , at Keokuk, Iowa, crossing and re-crossing in regular trips just below said bridge. The boat drew six feet of water, and for part of the time landed at a point about 700 feet east of the east end of said bridge and along side the approach thereto. The rest of the time we landed against the east abutment of said bridge.

S. M. BALL.

Subscribed and sworn to before me, this 28th day of October, A. D. 1893.

[SEAL.] JAMES B. CLARK,
Notary Public.

My term expires March 16th, 1894.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,

vs.

THE STATE OF ILLINOIS.

State of Ohio, }
Hardin County. } ss.

Henry B. Whitney, being duly sworn, doth depose and say, as follows :

That for many years he was a licensed pilot and master of steamboats on the Mississippi River, and that during that time, to-wit: from 1879 to 1891, he was engaged at various times in piloting and managing vessels engaged in the improvement of said river, part of the time employed by the United States in piloting boats engaged in dredging and other work in the Des Moines Rapids Canal and the waters of the Mississippi river adjacent adjacent thereto, particularly at the lower entrance to said canal along the Iowa shore in the City of Keokuk, and that in dumping the material dredged from said canal and the entrance thereto he had occasion to pass through the draw of the Keokuk and Hamilton Bridge and cross the river immediately below said bridge more than 100 times, and that in crossing the river at all stages of the water he never found any obstructions nor any trouble in going anywhere necessary to dump said material in the sloughs on the Illinois shore or along the shores of the islands in Illinois. That he has crossed and re-crossed the the river repeatedly at a point about 400 feet east of the Iowa shore and about 150 yards below the above named bridge, with heavy tows and that he knows of no obstruction at that point nor anywhere near there

to the free navigation of the Mississippi River. That in the month of November, 1881, he was for a short time engaged as pilot and master upon a boat used to transfer material for repairing bridge, and that he landed a number of times at a point 700 feet east of the east end of the bridge, and that during the same time a very large and heavy ferry boat from St. Louis that drew from 5 to 7 feet of water made regular trips immediately below said bridge and landed at the same point.

H. B. WHITNEY.

Sworn to before me and subscribed in my presence, this 21st day of October, A. D. 1893.

[SEAL] WM. W. STEVENSON,
Notary Public, Hardin Co. Ohio.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,
vs.
THE STATE OF ILLINOIS,

State of Illinois, }
Hancock County. } ss.

Frank Meyers, being by me first duly sworn deposes and says, as follows:

I am a licensed pilot on the Mississippi River, residing at Warsaw, Illinois I have been engaged in the steamboat business since the year A D. 1861. In going up the Mississippi River previous to the building of the Keokuk and Hamilton Bridge at Keokuk, Iowa, we would keep our boats about the middle of the river, and after passing Keokuk would run

as close to the Iowa shore as possible in order to save distance, as the river runs almost a circular course there.

FRANK MEYERS.

Subscribed and sworn to before me, this 26th day of October, A. D. 1893.

[SEAL] HENRY J. M. LUEDDE,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,

vs.

THE STATE OF ILLINOIS.

State of Iowa, } ss.
Lee County. }

I, C. C. Carpenter, being first duly sworn, do depose and say, as follows:

I am a licensed pilot on the Mississippi River and reside at Lansing, Iowa. I have been licensed for the last 23 years. I also hold a master's license, and am in charge, at this date, of the tow boat Inverness and engaged in towing lumber in rafts down the Mississippi River. The stage of the water at Keokuk, Iowa, which is at the foot of the Des Moines Rapids in said river, as shown by the guages, is to-day at one foot and one half above extreme low water mark of 1864. At this stage of the river, boats nor rafts cannot be brought over the rapids, but are compelled to come down through the Des Moines Rapids canal.

For these reason lumber that is designed for points in Illinois opposite Keokuk, Iowa, is brought through the canal and down through the pivot span of the

Keokuk and Hamilton Bridge, to where there is good water and taken across the river below said bridge and landed on the Illinois shore, and upon this 23d day of October, 1893, I not only brought a raft out in the manner described above but pushed it across the river and up through the east span of said bridge finding but very little, if any difference, in the water in crossing the river in this way. The river bed above said bridge for a considerable distance is comparatively level, with a smooth rock bottom, except where here and there in a soft spot the rock has been worn into a hole. Along the Illinois shore, that is to say, the west banks of the Islands opposite Keokuk there is a sort of a "gut" where the water is deeper than along the Iowa shore.

C. C. CARPENTER.

Subscribed and sworn to before me, this 23d day of October, A. D. 1893.

[SEAL.] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,

vs.

THE STATE OF ILLINOIS.

State of Iowa, } ss.
Lee County, }

William Dobler, being by me first duly sworn, deposes and says, as follows:

I am a resident of Sumner, Washington, and am licensed as a pilot to run on the Mississippi River since 1876. At this time I am employed as a

pilot upon the tow boat Inverness, and engaged in bringing rafts of lumber down the Mississippi River. When the water is very low, as it is now neither boats nor rafts can be brought over the Des Moines Rapids of the river, which rapids end at Keokuk, Iowa. Everything is then brought through the Des Moines Rapids canal. On this 23d day of October, the above named boat, in tow of a raft, brought the same down through said canal, then on down through the draw of the Keokuk and Hamilton Bridge, a short distance below, said canal, to where there is good water, immediately below said bridge, and then pushed said raft across the river just below the bridge and up through the east span of said bridge, finding about the same stage of water clear across and just as good under the east span as the pivot span of the bridge.

WILLIAM DOBLER.

Subscribed and sworn to before me, this 23d day of October, A. D. 1893.

[SEAL.] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES:

STATE OF IOWA,
vs.
STATE OF ILLINOIS.

State of Iowa, } ss.
Lee County, }

W. H. Jones, being by me first duly sworn, deposes and says as follows:

I am a resident of Keokuk, Iowa; by profession a Civil Engineer and am now and for two years past

have been the City Engineer for said city, and have in my charge the maps, profiles, etc., pertaining to the original surveys of said city. On this, the 24th day of October, 1893, I took the necessary measurements to determine the shore line at Keokuk, Iowa, opposite the west end of the Keokuk and Hamilton Bridge. I have read the affidavit of H. S. Brown, made on the 19th day of September, 1893; made for use of the State of Illinois on the motion to set aside the order confirming the report of the Commissioners in fixing the boundary line between the States of Iowa and Illinois, in which he states that the deepest water was 250 feet from the Iowa shore line. And I find by careful measurements that at a point 250 feet from the Iowa shore line there is at this date with a stage of 1.4 feet above low water no water at all at that point and that it would be necessary to go at least 50 feet further to reach the west abutment of said bridge, and about 75 feet still further to reach the centre of the channel blasted out of the rock by the United States so as to form a channel from the pivot span of said bridge to the entrance to the Des Moines Rapids Canal.

I have also read the affidavit and examined the profile made by Thomas B. McMath on September 20th, 1893, in the same case as noted above, and on this 24th day of October, 1893, with the water at a stage of 1.4 feet above low water and 1 foot above the stage indicated upon the profile noted above, have taken soundings in the river at the following points to wit; at the point on the said profile noted as station 1400 and find that there is 7.5 feet of water over the bed of the river but only 2.5 feet on the old pier immediately under that point and on which the soundings noted on said profile must have been taken.

Going up the river from where the deepest water is indicated upon said profile I took soundings for 300 or 400 feet finding about 6.5 feet of water. At the point indicated upon said profile as "Commissioners mark" I found from 6′ to 6.5′ to the bed of the river.

Although the sand has formed a bar there that leaves but 4 to 5 feet above the sand. I noticed that east of this point and directly under said bridge the water was about the same, perhaps a few inches deeper: i. e. 6.5 to 6 to 7 feet over the bed. Below the pier right at the state line there is a large deposit of rock thrown in around said pier which caused the bar to form.

W. H. JONES.

Subscribed and sworn to before me, this 24th day of October, 1893.

[SEAL.] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF IOWA,
vs.
STATE OF ILLINOIS,

State of Iowa, } ss.
Lee County. }

I, W. S. Sample, being duly sworn, do depose and say as follows:

I am a resident of the City of Keokuk, Iowa, and have lived in or near said city for more than 40 years. Previous to the year 1871 I was engaged in the ferrying business between Keokuk, Iowa, and Hamilton,

Illinois and was constantly crossing and recrossing the Mississippi River at or near the place now occupied by the Keokuk and Hamilton Bridge with a large and heavy ferry boat. Part of that time there was a warehouse known as the Hamilton Warehouse on the Illinois shore of the island opposite Keokuk and about 1500 feet above the east end of the above named bridge and from 500 to 700 feet east of the east end of said bridge, to which I have gone repeatedly for merchandise, etc., and to which I have seen a great many times, the steamboats plying the river land, it being one of the regular landings of the Mississippi River. That in later years and previous to the building of said bridge, the Wabash Railroad had a warehouse about 700 feet east of the east end of said bridge, to which steamers of ALL classes made regular trips. That leading out from this warehouse into the river immediately above the east approach to said bridge a pier was built so that the railroad tracks could be extended into the river to take off the heavy freight to or from the boats and that all of the heavy stone used in the basement story of the Capitol Building at Springfield, Illinois was quarried a few miles above this point in Illinois, and brought to this pier to be loaded into cars, etc That I have crossed and recrossed the Mississippi River both above and below the said bridge more than 500 times upon steamers, ferry boats, etc., and that I always found it navigable at any stage of water and that the same is navigable at the extreme low water mark of 1864 from a point 500 or 600 feet east of the east end of said bridge to a point 200 to 250 feet west of the west end of said bridge if the artificial obstructions are removed. That from his acquaintance with the Mississippi river and from a long experience and

observation he knows that there is nothing about 400 feet east of the Iowa shore and 150 yards below the Keokuk and Hamilton Bridge that is an obstruction to navigation or that has ever prevented boats of all classes from crossing or recrossing the river at that point or anywhere between there and the bridge above.

That he has repeatedly seen boats cross and recross the river both above and below said bridge since it was built, in towing lumber, willows and the fleets of the United States in taking dump boats from the Des Moines Rapids Canal. That for a long distance above said bridge, the river bed is one unbroken ledge of rock comparatively level, with an occasional pocket or hole where the rock was probably softer than at other places. That below said bridge the rock very soon disappears and much deeper water is found. That Keokuk is situated upon a point or promitory around which the river runs in almost a complete semi-circle and that boats in going up or down the river and not having to land at Hamilton, Illinois, would as a matter of economy both of time and of fuel keep in as close as possible to the Iowa shore on the inside of the circle, but that from my knowledge of the river that was not necessary except as noted above.

In witness whereof I have hereunto set my hand this 24th day of October, A. D., 1893.

W. S SAMPLE.

Subscribed and sworn to before me this 24th day of October, A. D., 1893.

[SEAL.] WM. J. SCHLOTTER.

Notary Public in and for Lee Co., Iowa.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,

vs.

THE STATE OF ILLINOIS.

State of Iowa, }
Lee County, } ss.

John C. Daniels, being by me first duly sworn, deposes and says, as follows:

My residence is Keokuk, Iowa, and my business that of a steamboatman, engaged in towing rafts of lumber and logs down the Mississippi River. I have been engaged in this business since 1867, and am the owner of two steamboats, which I use for the above purposes. Whenever there is a low stage of water neither boats nor rafts can navigate the Des Moines Rapids of the Mississippi River, but are brought through the Des Moines Rapids canal. I frequently sell or contract for the delivery of lumber at Hamilton, Illinois, opposite the City of Keokuk, Iowa, and whenever the stage of water prevents coming over the rapids with safety, I have brought the rafts down through the canal and taken them across the river just below the Keokuk and Hamilton Bridge and landed them against the west bank of the islands, either below the east end of said bridge or pushed them up through the east span of said bridge as far as possible for the smoke stacks of my boat, as the bridge is a low bridge, with its draw span on the Iowa side. In the summer of A. D. 1892, when the water was extremely low, I took some very long and heavy cribs of lumber across to the Illinois side with a boat that conld run under the bridge and on this occasion I ran up through the bridge in a quartering

direction and landed them above the east end of said bridge about 900 to 1200 feet and from 400 to 600 feet east of its end. I know that there has been good water for navigation for a long distance above said bridge in Illinois, and before artificial means had changed the condition it was as good as along the Iowa shore.

JOHN C. DANIELS.

Subscribed and sworn to before me, this 25th day of October, 1893.

[SEAL.] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,
vs.
THE STATE OF ILLINOIS.

State of Iowa, }
County of Lee, } ss.

I, John Smith, being first duly sworn, do depose and say, as follows:

I am a citizen of Iowa, and have resided in the City of Keokuk for the last 38 years. My business is that of a fisherman in the Mississippi River, and in following that business for about 18 years, I have become familiar with every part of the river between Keokuk, Iowa, and Hamilton, Illinois, as I have frequent occasions to pass and repass over every part of same in setting nets, anchors, &c., &c., at all stages of the water. For a considerable distance both above and below the Keokuk and Hamilton Bridge, the river bed is almost one unbroken bed of rock, ex-

cept where here and there a soft spot has been worn into a hole or pocket. The deepest water under said bridge being one of these holes, which is very narrow and disappears as you go directly up or down the river. Before said bridge was built the bed of the river washed off clean and and smooth from shore to shore, but since the building the bridge and the approach thereto, considerable filling has taken place and occasionally forms a sand bar for only a short time, usually above some of the piers to the bridge. I know there is no ledge of rock, nor any other obstruction to navigation about 400 feet east of the Iowa shore and 150 yards below said bridge, nor any where between that point and said bridge that would prevent the free navigation of said river between Island No. 4 in Illinois, and the main bank in Iowa. I have seen the packet steamboats that ply the river land at Island No. 4 near the old Wabash depot about 700 feet east of the east end of the said bridge a great many times before the bridge was built, and have seen them as many more times land at the old Hamilton warehouse about 1300 or 1400 feet above said bridge, and about 700 or 800 feet east of the east end of said bridge. I know there is good water all along the shore of the Island above said bridge and that boats go in there very frequently with lumber, or for willows from the island, and that at a very low stage of water.

JOHN SMITH.

Subscribed and sworn to before me, this 23d day of October, A. D. 1893.

[SEAL] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,

vs.

THE STATE OF ILLINOIS.

State of Iowa, }
Lee County. } ss.

Jacob Heinz, being by me first duly sworn, deposes and says, as follows:

Commencing with the year 1859 I was employed in various ways upon the steam boats that run upon the Mississippi River between St. Louis, Mo., and St. Paul, Minn., for many years, and for a considerable time was engaged on the ferry boats that ran between Keokuk, Iowa, and Hamilton, Illinois. I am very familiar with the landings in Illinois, opposite the City of Keokuk, and know that the largest steamers that came to Keokuk were in the habit of going to the old Hamilton warehouse about one-half mile above the east end of the Keokuk and Hamilton Bridge, and of going to the depot of the Wabash Railroad which was built in later years on or near the west bank of Island No. 4, or 600 to 800 feet east of the east end of said bridge, and that this was done whenever there was freight to load or unload, and at any stage of water that these boats could get to Keokuk from the south.

JACOB HEINZ.

Subscribed and sworn to before me, this 24th day of October, 1893.

[SEAL] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,

vs.

THE STATE OF ILLINOIS.

State of Iowa, } ss.
Lee County, }

Henry Conn, being first duly sworn, doth depose and say, as follows:

That he is a citizen of Keokuk, Iowa, and has resided there for years. That during the years 1868 to 1871 he was employed upon the ferry between Keokuk, Iowa, and Hamilton, Illinois, and became well acquainted with the Mississippi River between these two points. That previous to the building of the Keokuk and Hamilton Bridge there was a warehouse belonging to the Wabash Railroad Co., located about 650 to 750 feet east of the east end of the Keokuk and Hamilton Bridge, to which boats of all classes went, at all stages of water, to receive and discharge their loads. That afterwards a pier was built from this warehouse out into the river just above what is now the east approach to said bridge, and that boats landed alongside of this to take on and put off the heavy freight that was not taken into the warehouse. At this point I saw the heaviest kind of stone loaded into cars to be taken to Springfield, Illinois. I think I have crossed the river both above and below the Keokuk and Hamilton Bridge not less than 1000 times, and I never saw any obstruction nor heard of any about 400 feet east of the Iowa shore and about 150 yards below the bridge, nor between that point and the bridge, that would prevent the

free navigation of the river from bank to bank. Since the Des Moines Rapids Canal was built I have seen the tow boats with their tows come out of the canal and cross the river below the bridge in all sorts of ways and in all stages of the water. The bed of the river above said bridge is nearly level, with occasional holes, where a soft spot is found in the rock bottom, but perhaps 500 to 600 feet below the bridge the rock shelves off and the water grows deeper.

HENRY CONN.

Subscribed and sworn to before me, this 24th day of October, A. D. 1893.

[SEAL] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,
vs.
THE STATE OF ILLINOIS.

State of Iowa, } ss.
Lee County. }

Jacob Schlotter, being by me first duly sworn, deposes and says, as follows:

I reside at Keokuk, Iowa, and from the fall of 1858 to 1869 was engaged in various capacities upon the steamboats running on the upper Mississippi River from St, Louis, Mo., to Keokuk, Iowa.

The boats that I served on were the Warsaw, Lucy Bertram, Andy Johnson, &c., being the largest boats that ran above St. Louis. I am familiar with the location of where the Hamilton warehouse and afterwards where the Wabash Railroad depot stood

on the west banks of the Islands opposite Keokuk, and know that the boats I have named above, as well as others upon which I served went to these warehouses at any stage of water when we got to Keokuk.

JACOB SCHLOTTER.

Subscribed and sworn to before me, this 25th day of October, A. D. 1893.

[SEAL] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES

THE STATE OF IOWA,
vs.
THE STATE OF ILLINOIS.

State of Iowa, }
County of Lee. } ss.

I, Charles Bartlett, a citizen of Hamilton, Illinois, being duly sworn, do depose and say, as follows:

I am a civil engineer by profession, but for the last four years have been engaged in the lumber business in Hamilton, Illinois, and that all or nearly all the lumber bought for our business is brought down the Mississippi River in rafts. That at a good stage of water it is brought down Hamilton Slough, and landed on the main shore in Illinois, in the City of Hamilton.

That at other times, it is brought down through the Des Moines Rapids Canal, and then brought across the river and landed along the shores of the islands between said slough and the main arm of the

river. That in September, 1891, when the stage of water in the river was three to five inches below the low water mark of 1864—which is the government standard for reference— and when no boats could navigate the river above the Keokuk and Hamilton Bridge, except by going through the Des Moines Rapids Canal, I had rafts brought down through said canal and below said bridge and from there towed across the river and up through the east span of said bridge to where there was a convenient place for pulling said rafts, and loading the lumber on wagons to haul to my yards. That I found sufficient water immediately above said bridge along the west bank of the island, but that from 300 to 900 feet above said bridge the water was still deeper and better for my purposes. I have repeated this three or four times in low water, but not when it was quite so low as the time mentioned, but when that was the only way of getting the lumber over the Des Moines Rapids.

CHARLES BARTLETT.

Subscribed and sworn to before me, this 31st day of October, A. D. 1893.

[SEAL.] WILLIAM J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF IOWA, }
vs. } Original.
STATE OF ILLINOIS, }

State of Iowa, }
Lee County } ss.

H. R. Dickinson being by me first duly sworn doth depose and say as follows:

I am a citizen of Hamilton, Illinois, and have re-

sided there for the past 48 years. During all this time I have been familiar with the Mississippi River between Hamilton, Illinois and Keokuk, Iowa; part of the time I was engaged in the ferry business between these towns.

I know that steamboats often landed at the old Wabash Depot on Island No. 4, and received and discharged freight, as well as at a warehouse owned by Hamilton, about ¼ mile north east from said Wabash depot. Said Wabash Railroad had its depot on Island No. 4, about 700 feet east of the east end of the Keokuk and Hamilton Bridge, from which it received and delivered to steamboats freights for 10 or 12 years and until said bridge was built. From this warehouse a pier or dyke was built out into the river 600 or 700 feet and just above the east approach to said bridge so that heavy freights could be handled directly to and from the cars and boats, and from the south side of said pier was shipped the stone for the basement story of the Capitol at Springfield, Illinois, which were quarried a few miles up the river in Illinois, and brought here on boats for shipment. At present and for some years past I have been in the lumber business and buy most of my lumber in rafts and bring it down the river in that way. When there is a good stage of water I have it brought down over the rapids and delivered in Hamilton slough, and pull it on the main shore in Hamilton. This slough has been navigable in times past for quite large boats and some 38 years ago a packing house stood on its eastern shore to which boats came to receive and discharge freight. Since the Wabash Railroad bridge was built across it, the course was changed and the waterway made so narrow that it has since filled up a great deal.

Whenever the river has been too low to bring rafts over the rapids I had them brought down through the Des Moines Rapids Canal, and then taken below the bridge above named, and towed accross by steamer just below it to the east span of said bridge and brought up under that span a distance of from 100 to 1500 feet in the water along the west bank of the island above the bridge, and there I find water deep enough for any ordinary steamboat and for my purposes. On the 23d to 25th of October, 1893, with a stage of water from 1-3 to 1.5 feet above low water I was receiving lumber in this way.

I have crossed the river over 500 times above and below said bridge and know of no obstruction about 400 feet east of the Iowa shore, and about 150 yards below said bridge that would prevent the free navigation of said river from bank to bank, nor do I know of any obstruction between that point and the bridge that would interfere with any steamboat.

I have in very recent years seen the fleets of the United States Engineer Corps, that were engaged in dredging the Canal, cross or recross below said bridge, going to the sloughs on the Illinois side, or to the shore, or just below the bridge to dump their loads, and never knew nor heard of one having any trouble in going any where below said bridge. I know that a few years since one of the piers under said bridge, near where the state line has been marked was moved by the ice, and that the Bridge Company threw in a great lot of rock to hold it against further trouble.

I also know that some 350 feet west of this point the Bridge Company put in a wooden pier or crib and that the bottom part of it is still there. My opin-

ion is that from the time I settled in Hamilton, and until the Ferry Company constructed its road accross Islands Nos. 2 dammed the slough between Islands Nos. 2 and 4, and extended a dyke some 300 feet into the river, that any steamboat that could go up or down the rapids, could pass over any part of said river between the Iowa shore and the west banks of Islands Nos. 2 and 4, and have more water than on the rapids, The construction of said road, dam and dyke by the Ferry Company to a considerable extent changed the course of the current towards the west side of the river and as I believe caused deposits of sand and silth below said dyke where before the bottom of the river was a smooth flat rock, with an occasional hole worn by the ice and other agencies.

H R. DICKINSON.

Subscribed and sworn to before me this 1st day of November, A. D, 1893.

[SEAL.] WM. J. SCHLOTTER,
Notary Public.

IN THE SUPREME COURT OF THE UNITED STATES.

THE STATE OF IOWA,
vs.
THE STATE OF ILLINOIS.

State of Missouri, } ss.
St. Louis County. }

Charles S. Whitney, being first duly sworn, deposes and says, as follows:

I reside in the City of St. Louis, Mo. For many years I was employed in contract work under the United States Engineer corps for the improvement of the Mississippi River, part of the time as an employee, but for seven years as a principal, and part owner of a fleet of steamboats, dredge boats, &c.,

adapted to that business. I am familiar with the Mississippi River between Keokuk, Iowa, and Hamilton, Illinois, and for 10 or 12 miles above where the Keokuk and Hamilton Bridge crosses said river, which part of the river is known as the Des Moines Rapids, and which were improved and made passable in low water by the building of the Des Moines Rapids Canal, on which improvement I was engaged for six years, and through my connection with this work and a study of the maps, profiles, &c., connected with the "rapids" and prepared by the U. S. Engineer Corps, and my experience in operating boats over these rapids, I became well acquainted with the river whole mentioned above. The bed of the river for a long distance above the said bridge is practically one unbroken ledge, nearly level, with the same stage of water from bank to bank, and with here and there a hole worn by the ice or other cause. Perhaps a mile above said bridge is a chain of rock, through which the U. S. blasted a channel many years ago, and before the building of the canal. This channel is a little nearer the Iowa than the Illinois shore, and in low water boats kept in as close as possible to the Iowa shore in order to save distance and to strike this blasted or made channel. From having gone innumerable times across the river between the above named towns I know there is nothing to prevent any ordinary boat that can reach Keokuk, from navigating said river from the west banks of the Islands in Illinois to the Iowa shore.

CHARLES S. WHITNEY.

Subscribed and sworn to before me, this 1st day of November, 1893. Witness my hand and notarial seal hereunto set and affixed.

My term expires January 27th, 1897.

[SEAL] H. Y. SHERWOOD,

Notary Public in and for the City of St. Louis, Mo.

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